

267
K
H

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 1363**
Koichi HATA et al. : Docket No. 2001_1146A
Serial No. 09/929,487 : Group Art Unit 2631
Filed August 15, 2001 : Examiner Not yet assigned

DATA TRANSMISSION APPARATUS AND METHOD

**PETITION FOR ADVANCEMENT
OF EXAMINATION UNDER 37 C.F.R. § 1.102**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request that the above-identified application be granted special status in accordance with MPEP § 708.02(VIII).

In accordance with MPEP § 708.02(VIII)(A), accompanied herewith is the fee set forth in 37 C.F.R. § 1.17(h).

In accordance with MPEP § 708.02(VIII)(B), it is respectfully submitted that claims 11-20 are directed to a single invention. Further, if the Office determines that all of the claims presented are not obviously directed to a single invention, Applicants will make an election without traverse as a prerequisite to the grant of special status.

In accordance with MPEP § 708.02(VIII)(C), Applicants submit that a pre-examination search was made. A search by the European Patent Office included classification area H04L.

In accordance with MPEP § 708.02(VIII)(D), copies of references EP 1006689 (the '689 reference) and EP 1009138 (the '138 reference), which are deemed most closely related to the subject matter encompassed by the claims, are already of record as submitted with an Information Disclosure Statement (IDS) on August 27, 2004. For the convenience of granting the special status, courtesy copies of the '689 reference and the '138 reference are additionally attached hereto.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 1363**
Koichi HATA et al. : Docket No. 2001_1146A
Serial No. 09/929,487 : Group Art Unit 2631
Filed August 15, 2001 : Examiner Not yet assigned

DATA TRANSMISSION APPARATUS AND METHOD

PATENT OFFICE FEE TRANSMITTAL FORM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached hereto is a check in the amount of \$130.00 to cover Patent Office fees relating to filing the following attached papers:

Petition For Advancement of Examination
Under 37 C.F.R. § 1.102 \$130.00

A duplicate copy of this paper is being submitted for use in the Accounting Division, Office of Finance.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

Respectfully submitted,

Koichi HATA et al.

By Thomas D. Robbins
Thomas D. Robbins
Registration No. 43,369
Attorney for Applicants

TDR/jlg
WENDEROTH, LIND & PONACK, L.L.P.
• 2033 K St., N.W., Suite 800
• Washington, D.C. 20006-1021
Telephone (202) 721-8200
October 13, 2004

[Check No. 64589]
2001_1146A

In accordance with MPEP § 708.02(VIII)(E), the following detailed discussion points out, with particularity required by 37 C.F.R. § 1.111(b) and (c), how the claimed subject matter is patentable over the '689 and '138 references.

Independent claim 11 recites that a priority assignment part is operable to change a manner of assigning priorities to data packets "so that a number of times a higher priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter."

Independent claim 16 recites that the assigning priorities comprises changing a manner of assigning priorities to data packets "so that a number of times a higher priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter."

Neither the '689 reference nor the '138 reference discloses or suggests the above identified limitations.

The '689 reference discloses a data transmission apparatus for relaying data transmitted from a transmitting end in units of packets, wherein each packet has additional information relating to its sequence number, priority and data reproduction time. The '689 reference discloses that during packet transmission, packets having a priority equal to or higher than a predetermined value are stored for retransmission. Upon receipt of a retransmission request, the packets stored for retransmission are retransmitted.

The '689 reference fails to disclose or suggest changing the manner of assigning priority to packets. Therefore, the '689 reference fails to disclose or suggest: a priority assignment part that is operable to change a manner of assigning priorities to the data packets so that a number of times a high priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter, as recited in independent claim 11; or changing a manner of assigning priorities to the data packets so that a number of times a higher priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter, as recited in independent claim 16.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the above-mentioned differences between the '689 reference and each of claims 11 and 16, it is clear that the '689 reference does not anticipate claims 11 and 16.

Furthermore, the above-mentioned differences between the '689 reference and each of claims 11 and 16 are such that one of ordinary skill in the art at the time of the invention would not have been motivated to modify the teachings of the '689 reference so as to arrive at the invention as recited in independent claims 11 or 16. Therefore, claims 11 and 16 are patentable over the '689 reference within the meaning of 35 U.S.C. § 103.

Still further, claims 12-15 and 17-20 are dependent upon claims 11 and 16, respectively, and therefore include all of the limitations thereof. Accordingly, claims 12-15 and 17-20 are additionally patentable over the '689 reference.

The '138 reference discloses one embodiment wherein packets are transmitted based on their respective priorities such that packets with low priority are not transmitted. The '138 reference additionally discloses another embodiment wherein packets to be transmitted are rearranged in order of priority in order to ensure that packets are reproduced in a timely manner.

The '138 reference fails to disclose or suggest changing the manner of assigning priority to packets. Therefore, the '138 reference fails to disclose or suggest: a priority assignment part that is operable to change a manner of assigning priorities to the data packets so that a number of times a high priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter, as recited in independent claim 11; or changing a manner of assigning priorities to the data packets so that a number of times a higher priority is assigned is decreased when the packet reception state does not meet a parameter, and the number of times the higher priority is assigned is increased when the packet reception state meets the parameter, as recited in independent claim 16.

Therefore, in view of the above-mentioned differences between the '138 reference and each of claims 11 and 16, neither one of claims 11 and 16 is anticipated by the '138 reference.

Furthermore, the above-mentioned differences between the '138 reference and each of claims 11 and 16 are such that one of ordinary skill in the art at the time of the invention would not have been motivated to modify the teachings of the '138 reference so as to arrive at the invention as recited in each of independent claims 11 or 16. Accordingly, claims 11 and 16 are additionally patentable over the '138 reference within the meaning of 35 U.S.C. § 103.

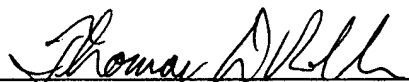
Still further, claims 12-15 and 17-20 are dependent upon claims 11 and 16, respectively, and therefore include all of the limitations thereof. Accordingly, claims 12-15 and 17-20 are additionally patentable over the '138 reference.

In view of the above remarks Applicants submit that claims 11-20 are patentable over the '689 reference and the '138 reference, either singly or in combination.

Applicants have complied with each of the requirements of MPEP § 708.02(VIII). Accordingly, it is respectfully requested that the Petition under 37 C.F.R. § 1.102 for advancement of examination be granted.

Respectfully submitted,

Koichi HATA et al.

By: 

Thomas D. Robbins
Registration No. 43,369
Attorney for Applicants

TDR/jlg
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
October 13, 2004